

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

RYSTA LEONA SUSMAN, both  
individually and as Legal Guardian of  
SHANE ALLEN LOVELAND, et al.,

Plaintiffs,

V.

THE GOODYEAR TIRE & RUBBER  
COMPANY,

Defendant.

Case No. 8:18-cv-00127

**REPLY BRIEF IN SUPPORT OF GOODYEAR’S MOTION IN LIMINE TO  
PROHIBIT DAVID SOUTHWELL FROM  
OPINING ON TRUTHFULNESS OF WITNESSES AND PARTIES**

The Goodyear Tire & Rubber Company (“Goodyear”), by and through undersigned counsel, hereby submits its Reply Brief in Support of Goodyear’s Motion in Limine to Prohibit David Southwell from Opining on Truthfulness of Witnesses and Parties.

## ARGUMENT

There appears to be a disconnect between Goodyear's motion and Plaintiffs' opposition brief. Goodyear's short motion, based on well-settled evidentiary holdings not subject to dispute, seeks an order prohibiting Plaintiffs' expert, David Southwell, from "offering any testimony based on his *opinions and subjective belief with regard to the truthfulness, state of mind, or accuracy of Goodyear's interactions with NHTSA* as set forth in pages 28-29 of his report, or in any other way." (ECF No. 167 at 3 (emphasis added).)

In response, Plaintiffs lay out their (frequently factually inaccurate) version of events in connection with Goodyear's Tread Throw Investigation, a NHTSA investigation, and Goodyear's communications with NHTSA. These supposed facts, and the extent to which Goodyear may

dispute them through the course of trial if admitted, have no bearing on Goodyear's motion, which is based on a simple and well-settled evidentiary prohibition that an expert witness cannot offer opinions on the truthfulness of another witness or party, the state of mind of another witness or party, or offer any opinion at all based on his subjective beliefs. At no time do Plaintiffs discuss or even superficially address the law of the question, or cite to a single piece of legal authority. Presumably then, Plaintiffs concede the point but merely wanted to use the opposition brief to gratuitously present a narrative to the Court. Regardless, the factual issues with which Plaintiffs' opposition occupies itself are not pertinent to the narrow premise of Goodyear's motion. Though Goodyear does dispute the accuracy of Plaintiffs' misrepresentative narrative, such disagreements are not germane to the issue before the Court.

### **CONCLUSION**

For each of the foregoing reasons, and those previously briefed in Goodyear's opening motion papers, Goodyear requests that the Court grant Goodyear's Motion in Limine to Prohibit David Southwell from Opining on Truthfulness of Witnesses and Parties.

GREENSFELDER, HEMKER & GALE, P.C.

By: /s/ Edward S. Bott, Jr.  
Edward S. Bott, Jr.  
Clark W. Hedger  
Juliane M. Rodriguez  
10 South Broadway, Suite 2000  
St. Louis, MO 63102  
(314) 241-9090  
Fax: (314) 345-5465  
esb@greensfelder.com  
ch1@greensfelder.com  
jrodriguez@greensfelder.com

AND

BAIRD HOLM LLP  
Jennifer D. Tricker (NE# 23022)  
1700 Farnam Street, Suite 1500  
Omaha, NE 68102-2068  
(402) 344-0500  
jtricker@bairdholm.com

*Attorneys for The Goodyear Tire & Rubber  
Company*

### **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with NECivR 7.1(d)(3) and further certify that the word count function was applied to include all text, including the caption, headings, footnotes, and quotations. This document was prepared using Microsoft Word 2010 and contains 630 words.

\_\_\_\_\_/s/ Edward S. Bott, Jr.

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was filed with the Clerk of the Court and served upon all attorneys of record using the CM/ECF system this 18th day of February, 2020.

Kyle W. Farrar  
KASTER, LYNCH, FARRAR & BALL, LLP  
1117 Herkimer St.  
Houston, TX 77008  
[kyle@fbtrial.com](mailto:kyle@fbtrial.com)

Paul E. Godlewski  
SCHWEBEL, GOETZ & SIEBEN, P.A.  
80 South 8<sup>th</sup> Center  
5120 IDS Center  
Minneapolis, MN 54402  
[pgodlewski@schwebel.com](mailto:pgodlewski@schwebel.com)

Michael F. Coyle  
FRASER, STRYKER LAW FIRM  
409 South 17<sup>th</sup> Street  
Suite 500, Energy Plaza  
Omaha, NE 68102  
[mcoyle@fraserstryker.com](mailto:mcoyle@fraserstryker.com)

*Attorneys for Plaintiffs*

\_\_\_\_\_/s/ Edward S. Bott, Jr.